IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2006

CORAM:

THE HON'BLE MR. JUSTICE P.SATHASIVAM

AND

THE HON'BLE MR. JUSTICE J.A.K.SAMPATHKUMAR

WRIT APPEAL Nos.551 & 552 of 2001

and CMP.Nos.4834 and 4835 of 2001

1. The General manager
   Balmer Lawrie and Co., Ltd.,
   (A Govt. Of India Enterprises)
   First Floor, JVL Plaza
   501 Anna Salai
   Madras 18.

2. The Deputy General Manager (HRD)
   Balmer Lawrie and Co. Ltd.
   (A Govt. Of India Enterprises)
   First Floor, JVL Plaza
   501 Anna Salai
   Madras-18. .. Appellants in both the appeals.

vs.

1. S.Rajagopalan

2. The General Manager
   AVI-OIL India Ltd.
   (A Public Company registered
   under Companies Act)
   First Floor, JVL Plaza
   501 Anna Salai
   Madras 18. .. Respondents in both the appeals.

Writ Appeals filed under Clause 15 of the Letters of Patent against the common order of the learned Judge Mr. Justice P.D. Dinakaran, dated 05.12.2000 made in W.P.Nos.8872 and 8873 of 1995. This petition presented to this Court under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent bearing No.CPD/SR/1 dated 19.1.95 quash the same and direct the respondent to order constitution of the petitioner's employment with the third respondent's company in respectively WP.No.8872/95 and WP.No.8873/95.

For appellants : Mr.Sanjay Mohan
for M/s.Ramasubramaniam Assts.

For respondents : Ms.Selvi George for R.1

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

COMMON JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.)

Aggrieved by the common order of the learned single Judge dated 05.12.2000 made in Writ Petition Nos.8872 and 8873 of 1995, the General Manager and the Deputy General Manager of Balmer Lawrie and Company Ltd. (a Government of India Enterprise), Madras-18, have filed the above writ appeals.

2. For convenience, we shall refer the parties as arrayed in the writ petitions.

3. Against the proceedings of respondents 1 and 2 (Balmer Lawrie and Company Ltd.) dated 19.01.1995, placing the writ petitioner under suspension and reverting him back to M/s. Balmer Lawrie and Comapny Ltd. in his substantive position of Deputy Manager (Finance), the petitioner has filed Writ Petition Nos.8872 and 8873 of 1995. The case of the petitioner is briefly stated hereunder:

According to him, he was appointed by the first respondent as Assistant Manager (A&F) on 08.01.1990 and thereafter, based on his service, he was recommended and appointed as General Manager (Personnel) of Balmer Lawrie and Company Ltd. as Finance Manager-cum-Company Secretary in the Nyco-B1.Ioc a joint venture company, which was later on incorporated as AVI OIL India Ltd. a public company, registered under the Companies Act 1956, the third respondent. By this appointment, he was given a lien on the Balmer Lawrie and Company for a period of two years with effect from the date of his assuming charge in the newly formed company. Further, he was not deputed to the third respondent Company, but was indeed appointed to it. Thereafter, he ceased to be an employee of Balmer Lawrie and Company Ltd. and became the employee of the third respondent Company though he was given the option for two years to get back to Balmer Lawrie and Company Ltd. In terms of the said appointment, he was also discharging his duties with the first and second respondents till May, 1994. The first and second respondents ceased to have any administrative control over him. While the first and second respondents are Officials of Government of India undertaking, third respondent is a Public Limited Company, its administration is totally independent. On transfer to third respondent Company, the petitioner became an employee of it and governed by its Rules and Regulations. While so, the second respondent i.e., Deputy General Manager, Balmer Lawrie and Company Ltd. without any basis, by his order dated 19.01.1995, reverted him back to Balmer Lawrie and Company Ltd. This reversion is without jurisdiction, as he had been transferred to third respondent Company and not deputed to it. He also served with another order dated 19.01.1995, suspending him from service of Balmer Lawrie and Company Limited. This order is mala fide since it has been issued after a period of 20 months of his WEB COPY from the first respondent Company.

https://hcservices.ecourts.gov.in/hcservices/

4. Before the learned single Judge, the General Manager of the first respondent Company filed a common counter affidavit, wherein it is stated that the petitioner was employed in their Company since 08.01.1990 and he continued to be an employee till he was suspended on 19.01.1995. The petitioner's service was transferred on secondment basis to the third respondent Company. The petitioner was all along paid salary by the Balmer Lawrie and Company till December, 1994 and his claims of perquisites were also approved and reimbursed by them. Though the petitioner was worked with the third respondent, the secondment allowance was received by the petitioner without any protest. The petitioner's service were given to the third respondent Company on secondment basis and also with condition that respondents 1 and 2 could re-transfer the petitioner whenever his service was required by them. In the case of petitioner, it is a case that involves no change of Employer, but was merely a case wherein he was transferred to third respondent along with lien being with Balmer Lawrie and Company Ltd. for a maximum period of two years. He was told that he would continue to look after his responsibilities with Balmer Lawrie and Company Ltd.

5. The learned single Judge, after finding that the option for reversion provided under order dated 05.10.1993 is not absolute, but only conditional and also redundant, concluded that the proceedings dated 05.10.1993 has to be considered only as a transfer of service of the petitioner from first respondent Company to third respondent Company once for all, the first respondent Company has no jurisdiction to pass the impugned orders of suspension and reversion; quashed both the proceedings and allowed the writ petitions, hence the present appeals by Balmer Lawrie and Company Ltd.

6. Heard Mr. Sanjay Mohan, learned counsel for appellants and Mrs.Selvi George for the contesting first respondent.

7. The only point for consideration in these appeals is, whether even after the order dated 05.10.1993 and 01.11.1993, the first respondent, Balmer Lawrie and Company Ltd. has power to take action against the petitioner, such as passing order of suspension and reversion?

8. In the earlier part of our order we have mentioned the two orders passed by the first respondent on 19.01.1995. One is an order suspending the petitioner pending disciplinary action and another is reverting him to M/s. Balmer Lawrie and Company with immediate effect and posting him in a substantive position of Deputy Manager (Finance). Both the said orders were challenged by the petitioner in the writ petitions. The main ground of attack was that, after the order dated 05.10.1993/01.11.1993, he became an employee of the third respondent, respondents 1 and 2 have no authority or power to take any action including initiation of disciplinary proceedings against him.

9. On the other hand, it is the case of respondents 1 and 2 that the petitioner was merely transferred to third respondent Company with a lien over Balmer Lawrie and Company for a period of two years. It is also their claim that in the absence of exercising option within the period of two years, and of the fact that even after transfer to third respondent Company, the

https://hcservices.ecourts.gov.in/hcservices/

petitioner was attending the work of Balmer Lawrie and Company, the salary, perks, house loan, etc., were paid only by Balmer Lawrie and Company, they are entitled to take disciplinary proceedings against him. In order to appreciate the above stand, it is useful to refer the proceedings dated 05.10.1993/01.11.1993.

"BALMER LAWRIE & CO. LTD. Corporation Personnel Department
(A GOVERNMENT OF INDIA 21, Nataji Subahaa Road
ENTERPRISES) Calcutta 700 001 (India)

Ref:GN(P)SR/1

Dated 5th October 93.

Sri S.Rajagopalan

Associate Services

Madras.

Sub: Transfer.

1.Kindly refer to the discussions on the above subject.

2.Accordingly, it has been decided to transfer you to NYCO-BL-IOC Joint Venture Company at Madras as Finance Manager-cum-Company Secretary in your existing basic pay and grade with immediate effect. You are rejected to report to Shri. VN. Sharma, Deputy General Manager for further instructions.

3.You will have lien with Balmer Lawrie & Co.Ltd., for a maximum period of 2 years effective from the date you assume charge.

4.You will have to exercise the option either for absorption in NYCO-BL-IOC Joint Venture Company or reversion to Balmer Lawrie & Co.Ltd., before the expiry of 2 years lien period only. However, in case you opt for reversion, actual reversion will be subject to availability of a suitable vacancy, which may be before or after expiry of the lien period.

5.Further, you will continue to look after your existing responsibilities till such time the new incumbent joins.

6.All others terms and conditions of your service will remain unaltered.

We wish you all the success in your new assignment.

Yours faithfully

For BALMER LAWRIE & CO. LTD.(U. RAY),
General Manager (Personnel) "

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

10. It is clear from the above letter that the petitioner was given lien with Balmer Lawrie and Company for a maximum period of two years effective from the date he assumes charge with third respondent. He has free exercise option either for absorption in the NYCO-BL-IOC (AVI OIL India Limited) third respondent or reversion to Balmer Lawrie and Company before the expiry of two years lien period. It further shows that when he opts for reversion, actual reversion will be subject to availability of a suitable vacancy. As per Clause 5 he has to continue to look after the existing responsibility in the Balmer Lawrie and Company till such time the new incumbent joins. Clause 6 makes it clear all other terms and conditions prevail in Balmer and Lawrie Company will remain unaltered.

11. It is not in dispute that the petitioner has not opted or exercised his lien before the expiry of two years period. It is also clear from the terms of the proceedings dated 05.10.1993/01.11.1993, particularly in view of Clause 3 that he was given lien with Balmer Lawrie and Company Ltd. for a maximum period of two years, respondents 1 and 2 can very well revert him back to Balmer Lawrie and Company within the expiry of said period. As rightly argued by Mr. SanjayMohan, a perusal of all the Clauses, particularly, Clause 2 to 6 make it clear that petitioner's service were given to the third respondent on secondment basis and also with condition that respondents 1 and 2 could re-consider the petitioner whenever his service would be required. With various clauses in the proceedings dated 05.10.1993/01.11.1993, we are satisfied that the petitioner's service was transferred on secondment basis to the third respondent Company. Our conclusion also fortified in various circumstances as put forth by respondents 1 and 2.

(1) Even after transfer, the petitioner was all along paid salary by the first respondent Company, viz., Balmer Lawrie and Company Ltd. till the month of December, 1994.

(2) His norms of perquisites were also approved and re-imbursed by the first respondent Company.

(3) The petitioner was paid by the first respondent Company his secondment allowance and the same was received by the petitioner without any protest while he worked with the third respondent.

(4) He also availed furniture loan even after 05.10.1993 from Balmer Lawrie and Company.

(5) The first respondent Company alone paid on behalf of the petitioner in respect of reimbursement fees to professional bodies / institutes, such as, ICMA, London, Medical expenses reimbursement, etc.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

(6) The petitioner by quoting his employee number (under Balmer Lawrie and Co. Ltd.) applied for a No Objection Certificate to receive passport.

12. It is also brought to our notice that the petitioner has also claimed secondment allowance by his letter dated 23.07.1994, wherein he himself admitted that he was under secondment and therefore entitled to secondment allowance from his employer and also continue to receive the secondment allowance from Balmer Lawrie and Company Ltd. from the time he commenced to work with the third respondent, which would not have been available, had he been an employee of the third respondent. The claim of salary, payment of salary and other perquisites issuance of NOC with renewal of passport, payment of secondment allowance by the Balmer Lawrie and Company Ltd. are available in the form of letters / proceedings / orders in the typed set filed by the appellant Company.

13. Further in the letter dated 05.10.1993 and 01.11.1993, one of the conditions mentioned therein is that petitioner will continue to look after the existing liabilities till such time the new incumbent joins. Another condition in the said letter is that other terms and conditions of his service will be remain ulaltered and he will continue to retain his lien in the first respondent Company. As rightly argued by Mr. Sanjaymohan a reading of all these clauses clearly show that the petitioner is continue to be an employee of Balmer Lawrie and Company Ltd., accordingly, his claim that he has lost his position as public service and he could not be reverted back cannot be accepted. We are also satisfied that since the petitioner was placed on secondment basis, Balmer Lawrie and Company has every right to recall him as and when his services are required by them. In fact, Balmer Lawrie and Company reverted back the petitioner to their Company within a period of two years as stated in clause (3) and (4) of the letter dated 05.10.1993 and 1.11.1993. We are also satisfied that various Clauses referred to in the said letter make it clear that it involves no change of employer but merely a case wherein the petitioner was transferred to third respondent with lien being with Balmer and Lawrie for a maximum period of two hears and he was also specifically informed that he would continue to look after his responsibilities with them. All these material aspects were not properly considered by the learned Judge and committed an error in holding that the petitioner did not continue to hold lien for his service upon the appellants. As rightly pointed out the petitioner has not challenged the order dated 05.10.1993/01.11.1993 and in such circumstance the said order was final and binding upon the parties, in which case, as communicated in the order dated 05.10.1993, only the first respondent, i.e., Balmer Lawrie and Company, is empowered to take action against the petitioner. No doubt, the petitioner is equally entitled to defend the same in accordance with law.

In the light of the above discussion, particularly in view of various Clauses in letter dated 05.10.1993 / 01.11.1993, we are unable to accept the reasoning of the learned Judge. We are also unable to accept the conclusion of the learned Judge that

https://hcservices.ecourts.gov.in/hcservices/

proceedings dated 05.10.1993 has to be considered only as a transfer of service of the petitioner from first respondent Company to third respondent Company once for all. As pointed out above, particularly in the light of Clauses 3 to 6 in letter dated 05.10.1993/01.11.1993, the said conclusion is not warranted and we hold that the first respondent Company has jurisdiction to pass the impugned order dated 19.01.1995. Consequently, the common order dated 05.12.2000 made in Writ Petition Nos.8872 and 8873 of 1995, is set aside and the writ appeals are allowed. No costs. We make it clear that in the event of pursuing the disciplinary proceedings, the writ petitioner is free to defend the same in accordance with law and we have not expressed anything on the merits of disciplinary action.

In view of disposal of main appeals, connected CMPs., are closed.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The General Manager, Balmer Lawrie and Co., Ltd.
(A Govt. of India Enterprises)
First Floor JVL Plaza, 501, Anna Salai, Madras-18.

2.The Deputy General Manager (HRD)
Balmer Lawrie and Co., Ltd.,
A Govt., of India Enterprises, First Floor JVL Plaza
501, Anna Salai, Madras-18.

3.The General Manager, AVI OIL India Ltd.,
(A Public Company registered under company Act)
501, Anna Salai, Madras.

+ 2 Ccs to Mr.S.Ramasubramanian & Associates Sr.No.19949.
+ 1 Cc to M/s.Titus Jesudoss, Advocate Sr.No.19985.

AK (CO)
RSM/21.4.2006

Writ Appeal Nos.551 & 552 of 2001

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/